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FEDERAL ELECTION COMMISSION
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FIRST GENERAL COUNSEL'S REPORT

2005 JUN - 1 P 2: 36

SENSITIVE

RAD REFERRAL: RR04L-01R
DATE CASE OPENED: APRIL 2, 2004
DATE FORWARDED TO ADRO: MAY 17, 2004
DATE OF OGC ACTIVATION: MARCH 3, 2005

EXPIRATION OF STATUTE OF
LIMITATIONS: MAY 22, 2007

RESPONDENTS:

Take Back the House²
M. Mickey Williams, in his official capacity
as Treasurer
AT&T Corporation
Interactive Digital Software Association
Non-Federal PAC 1

RELEVANT STATUTES:

2 U.S.C. § 434(a)
2 U.S.C. § 441a(a)
2 U.S.C. § 441a(f)
2 U.S.C. § 441b(a)
11 C.F.R. § 102.5(b)
11 C.F.R. § 102.9
11 C.F.R. § 103.3(b)
11 C.F.R. § 104.5(c)
11 C.F.R. § 114.43
11 C.F.R. § 114.2(a)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: IRS Disclosure Reports

² Take Back the House has also been known as Democratic Majority. In March 2002, the Committee filed an amended Statement of Organization purporting to change its name to "Democratic Majority." However, the Committee filed subsequent reports using the name "Take Back the House."

I. INTRODUCTION

This Referral from the Reports Analysis Division ("RAD") identifies apparent excessive and prohibited contributions accepted by Take Back the House, a registered political committee. The referral indicates that the Committee accepted a contribution from an individual donor that exceeded the applicable limit by \$5,000, a prohibited corporate contribution in the amount of \$20,000, a prohibited labor organization contribution in the amount of \$25,000, and a contribution of \$2,500 from an unincorporated organization that is not registered with the Commission. RAD identified these apparent violations in the Committee's disclosure reports and sought resolution through RFAs before the matter was referred to the Office of General Counsel for resolution.³

II. FACTUAL AND LEGAL ANALYSIS

A. EXCESSIVE CONTRIBUTION

The RAD Referral indicates that the Committee accepted a \$10,000 contribution from an individual, Peter Angelos, in September 2002. Under the Federal Election Campaign Act of 1971, as amended ("the Act"), political committees, other than authorized political committees, national political party committees, or State political party committees, may accept up to \$5,000 from an individual per calendar year. *See* 2 U.S.C. §§ 441a(a) and (f). Accordingly, the \$10,000 contribution from an individual contributor is excessive on its face.

If a political committee receives a contribution that appears excessive on its face, the treasurer may request reattribution of the contribution by the contributor. *See* 11 C.F.R.

³ According to RAD, the treasurer, Mr. M. Mickey Williams, ignored their calls and provided evasive replies and incomplete responses to RFAs.

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§ 103.3(b)(3). If a reattribution is not obtained, the treasurer is required to refund the excessive portion of the contribution to the contributor within sixty days of the treasurer's receipt of the contribution. *See id.* The Committee's disclosure reports do not indicate that the Committee reattributed any portion of the contribution to another contributor or refunded any portion of the contribution to Mr. Angelos. Therefore, the Committee appears to have violated 2 U.S.C. § 441a(f) by knowingly accepting a contribution from an individual equal to twice the applicable contribution limit.

this Office recommends that the Commission take no action as to Mr. Angelos.

B. APPARENT PROHIBITED CONTRIBUTIONS

The RAD Referral indicates that the Committee accepted three contributions from prohibited sources: (1) a \$20,000 contribution from AT&T Corporation ("AT&T") in November 2002; (2) a \$25,000 contribution from the Michigan Regional Council of Carpenters ("MRCC"), a labor organization, in October 2002; and (3) a contribution of \$2,500 in May 2002 from the Interactive Digital Software Association PAC ("ISDA-PAC"), a nonfederal committee that appears to have lacked sufficient federal funds to make the contribution.

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1. Corporate Contribution

Corporations are prohibited from making, and political committees are prohibited from knowingly accepting, contributions made from the corporations' general treasuries in connection with federal elections. *See* 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(b). In this instance, Take Back the House's disclosure reports indicate that it knowingly accepted a corporate contribution from AT&T in the amount of \$20,000, and the disclosure reports do not indicate that this contribution was ever refunded to AT&T as required by 11 C.F.R. § 103.3(b)(1).⁴

In response to an RFAI, the Committee's treasurer maintained that receipt of this prohibited corporate contribution had been remedied, at least in part, because \$15,000 of this contribution had been "transferred" to a non-federal account of the Democratic Congressional Campaign Committee ("DCCC"). The Act and the Commission's regulations do not provide for this remedy. Rather, a committee that accepts a corporate contribution must refund the contribution to the contributor within thirty days of the treasurer's receipt of the contribution. *See* 11 C.F.R. § 103.3(b)(1). The "transfer" of prohibited funds, in whole or in part, to another political committee is not a remedy afforded by the Act or the Commission's regulations. Therefore, this "transfer" to the DCCC has no bearing on this violation of 2 U.S.C. § 441b(a).

Accordingly, this Office recommends that the Commission find reason to believe that Take Back the House and M. Mickey Williams, in his official capacity as treasurer, violated

⁴ Although AT&T has a registered political committee, AT&T Corp Political Action Committee (AT&T PAC), this political committee does not appear to have been the source of the contribution. AT&T PAC did not report this contribution in its disclosure reports, and Take Back the House reported the contribution as having been made by "AT&T Corp."

2 U.S.C. § 441b(a) by knowingly accepting a corporate contribution. This Office further recommends that the Commission find reason to believe that AT&T, Inc. violated 2 U.S.C. § 441b(a) by making a contribution to Take Back the House from its general treasury.

2. Labor Organization Contribution

Labor organizations are prohibited from making, and political committees are prohibited from knowingly accepting, contributions made from the labor organizations' general treasuries in connection with federal elections. *See* 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(a). Take Back the House's disclosure reports indicate that it knowingly accepted a contribution in the amount of \$25,000 from MRCC, an organization that identifies itself as a trade union.⁵ The Committee's disclosure reports do not indicate that this contribution was ever refunded to MRCC as required by 11 C.F.R. § 103.3(b)(1). Accordingly, this Office recommends that the Commission find reason to believe that Take Back the House and M. Mickey Williams, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a) by knowingly accepting a contribution from a labor organization.

With respect to MRCC, this Office is not making a recommendation at this time for the following reasons. In May 2003, in response to an inquiry from RAD, MRCC submitted to the Commission a letter dated May 9, 2003 that it claimed to have sent to Take Back the House. In the letter, MRCC stated that it made the \$25,000 contribution to "the Democratic Majority's 'Get Out the Vote' campaign" and that it was not MRCC's understanding that the contribution would be "distributed" to Take Back the House. The letter further stated that MRCC is "not allowed to contribute to committees that influence Federal Elections" and requested that Take Back the

⁵ *See* <http://www.hammer9.com/>. The United Brotherhood of Carpenters and Joiners of America, a labor organization, identifies the MRCC as one of its regional divisions. *See* <http://www.carpenters.org>.

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1 House either refund the \$25,000 contribution or place the money in a "fund that is not used to
2 influence any Federal Elections." Enclosed with this letter was a copy of the contribution check,
3 which shows that the check was made payable to "Democratic Majority." The memo line on the
4 check states, "Get Out The Vote (G.O.T.V.)." This Office has no specific reason to doubt the
5 explanation provided by the MRCC, and, therefore, we do not recommend that the Commission
6 make a reason-to-believe finding as to the MRCC at this time. Nevertheless, some questions
7 remain, including whether Take Back the House maintained a nonfederal account at the time of
8 the contribution⁶ and, if so, whether a misdeposit had been made for which the Committee is
9 willing to take responsibility. If the Committee did not maintain a nonfederal account, then
10 another question is why a federal political committee without a nonfederal account would accept
11 the union contribution in the first place.

⁶ It is unclear whether Take Back the House has or had a nonfederal account. The Committee lists only one bank account depository in its original and amended Statements of Organization. Further, a review of on-line campaign finance databases maintained by the Internal Review Service, the State Board of Elections of Maryland (where Take Back the House maintains an address), and the Michigan Department of State (where the MRCC is located), does not reveal the existence of a nonfederal account connected to Take Back the House.

3. Contribution From Non-Federal Funds

The RAD Referral indicates that Take Back the House also accepted a \$2,500 contribution from Interactive Digital Software Association Political Action Committee ("IDSA-PAC") in May 2002.⁸ This nonfederal committee filed with the Internal Revenue Service as a Section 527 organization and appears to have been registered as a nonfederal political committee with the Virginia State Board of Elections. In order for a political committee to accept a contribution from an unregistered organization into an account used to influence federal elections, the committee is required to take steps to insure that the contributor used permissible funds to make the contribution. *See* 2 U.S.C. §§ 441a(f) and 441b; 11 C.F.R. § 102.5(b). In addition, organizations that are not political committees under the Act may make contributions to federal committees, but they must be able to demonstrate through reasonable accounting methods that any contribution to a federal committee was made with funds raised subject to the limitations and prohibitions of the Act. *See* 11 C.F.R. § 102.5(b)(1).

According to disclosure reports filed with the IRS, all of the IDSA-PAC's receipts in 2002 were comprised of "dues" from its member trade associations, all of which are for-profit corporations. The large round numbers reported for these dues, such as \$100,000, suggests that they may have come directly from the general treasury of member corporations, rather than an

⁸ IDSA PAC received termination approval from the Commission in August 2000 and had not re-registered with the Commission at the time that the contribution to Take Back the House was made.

1 aggregate of small contributions from individual donors.⁹ Therefore, this Office recommends
2 that the Commission find reason to believe that Take Back the House and M. Mickey Williams,
3 in his official capacity as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 102.5(b) by
4 knowingly accepting a \$2,500 contribution from a nonfederal committee that did not have
5 sufficient federal funds to make the contribution. Further, this Office recommends that the
6 Commission find reason to believe that the Interactive Digital Software Association PAC, now
7 known as the Interactive Digital Software Association Non-Federal PAC 1,¹⁰ violated 2 U.S.C.
8 § 441b(a) and 11 C.F.R. § 102.5(b) by making a \$2,500 contribution to Take Back the House
9 with impermissible funds.

10 C. APPARENT REPORTING VIOLATIONS

11 Political committees are required to file complete and accurate reports of the committee's
12 receipts and disbursements on time, to monitor contributions to ensure compliance with the Act's
13 contribution source prohibitions and contribution limitations, to provide name and address
14 information of contributors who contribute more than \$50, and to report the purpose of each
15 disbursement. *See* 2 U.S.C. § 434(a); 11 C.F.R. §§ 102.9 and 103.3(b). The reports must be
16 filed on certain dates specified by the Commission. *See* 11 C.F.R. § 104.5(c). Take Back the
17 House has repeatedly failed to file reports consistent with these requirements.

18 The Committee's 2002 30-Day Post-General Election Report, which was filed on
19 December 5, 2002, was the last disclosure report filed with the Commission. Since then, the
20 Committee has failed to file eight required disclosure reports, leaving its activity from December

⁹ Small contributions from individual donors aggregating within the applicable contribution limits set forth in 2 U.S.C. § 441a(a) would indicate that IDSA-PAC had sufficient federal funds to make the contribution to Take Back the House.

¹⁰ In 2003, IDSA PAC changed its name to Interactive Digital Software Association Non-Federal PAC 1.

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1 2002 until the present completely unreported.¹¹ Accordingly, this Office recommends that the
2 Commission find reason to believe that Take Back the House and M. Mickey Williams, in his
3 official capacity as treasurer, violated 2 U.S.C. § 434(a) and 11 C.F.R. §§ 102.9, 103.3(b), and
4 104.5(c) by failing to file required disclosure reports with the Commission.

5 **III.**

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¹¹ Take Back the House filed for termination in December 2002; however, because of the Committee's outstanding RFAs, which concerned issues that were later referred to OGC, termination has not been granted. In June 2003, the Commission, through its Administrative Fines Program, fined the Committee \$1,800 for failing to file its 2002 Year End Report and the fine has been transferred to the U.S. Treasury for collection.

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IV. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that Take Back the House (a.k.a. Democratic Majority) and M. Mickey Williams, in his official capacity as Treasurer, violated 2 U.S.C. §§ 441a(f), 441b(a) and 434(a) and 11 C.F.R. §§ 102.9, 103.3(b) and 104.5(c).
3. Find reason to believe that AT&T Corporation violated 2 U.S.C. § 441b(a).
4. Find reason to believe that the Interactive Digital Software Association PAC, now known as the Interactive Digital Software Association Non-Federal PAC 1, violated 2 U.S.C. §§ 441b(a) and 11 C.F.R. § 102.5(b).
5. Take no action as to Peter Angelos.
- 6.
7. Approve the attached Factual and Legal Analyses.

8. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

Date

6/1/05

BY:

Ann Marie Terzaken
Assistant General Counsel

Lela R. Scott
Attorney

Attachments

- 1.
- 2.
- 3.
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- 5.
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